

The Office Action objects to claims 14-29. The Office Action also rejects claims 25, 27, and 29 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,355,879 to Brain (the “’879 patent”). The Office Action also rejects claim 28 under 35 U.S.C. 103(a) as being unpatentable over the ‘879 patent. Applicant acknowledges with appreciation that claims 1-13 have been allowed and that no prior art rejections have been made with respect to claims 14-24 and 26.

The Office Action objected to new claims 14-29 because they were not underlined. New claims 14-29, identical to those presented in the amendment dated March 8, 2001, except for the underlining, are represented with underlining in this paper.

Independent claim 25 requires “a first portion of the conduit being adhered to a portion of the back cushion”. Although the ‘879 patent shows a conduit and a back cushion in Figure 5, the ‘879 patent does not teach adhering the conduit to the back cushion. Accordingly, claim 25 is believed to distinguish the cited art.

Independent claim 27 requires “the central axis of the airway tube being disposed on one side of a saggittal plane” and “the central axis of the discharge tube being disposed on the other side of the saggittal plane”. Figure 2 of the issued ‘745 patent shows an example of such a mask in which, when looking from above, the airway tube 11 is disposed on the left and the evacuation tube 23 is disposed on the right. The saggittal plane, which is not shown in Figure 2, is perpendicular to the plane of the page of Figure 2 and bisects the mask extending from the proximal end to the distal end of the mask. Accordingly, the airway tube 11 is on the left of the saggittal plane and the evacuation tube 23 is on the right of the saggittal plane.

In Figure 5 of the ‘879 patent, tube 51 is above the airway tube 11. The central axes of these tubes are either on the same side of the saggittal plane, or are intersected by the saggittal plane. Accordingly, the ‘879 patent does not teach disposing an airway tube and discharge tube so that their central axes are located on either side of the saggittal plane. For at least these reasons, claim 27 is believed to distinguish the cited art.

With regard to dependent claims 28-29, since the independent claim 27 from which they depend is believed to be patentable as discussed above, dependent claims 28-29 are also believed to be patentable.

Claims 1-29, the claims remaining in the application, are believed to define allowable subject matter. An early and favorable examination is earnestly solicited. If there are any remaining issues, the Examiner is urged to contact the undersigned at the telephone number listed below.

A two month extension of time is requested in a separate paper. No other extensions of time are believed to be required for this paper to be timely filed. However, in the event that such an extension of time is required, please also consider this paper as a petition for an extension of time pursuant to 37 CFR 1.136 for any extensions of time necessary for this paper to be timely filed, and please charge the fee required for any such extensions of time to Deposit Account No. 08-0219. No other fees are believed to be due in connection with this paper. However, please charge any fees, or credit any overpayment, that may be due in connection with this paper to Deposit Account No. 08-0219.

February 27, 2002
Date

Respectfully submitted,



Richard A. Goldenberg
Reg. No. 38,895
Attorney for Applicant

Hale and Dorr LLP
60 State Street
Boston, Massachusetts 02109
Tel: (617) 526-6548

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